IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-10-2006

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR

W.P.Nos.12796 and 12797 of 1995
& W.M.P.Nos.20506 & 20508 of 1995
& 8204 and 9351 of 1997

D.Raj .. Petitioner in W.P.No.12796 of 1995

C.Padmanabhan .. Petitioner in W.P.No.12797 of 1995

vs.

1. The Chief Officer,
Personnel & Administration Dept.,
Indian Overseas Bank,
Central Office,
Madras.2.

2. The Chairman & Managing Director,
Indian Overseas Bank,
Anna Salai,
Madras-2.

3. Indian Banks' Association,
rep. by its Chairman Dr.Dalbir Singh,
Head Office, Blocks II & III,
Stadium House, 6th Floor,
Veer Nariman Point,
Mumbai-400 020.

(Third respondent-impleaded as per order of Court
dated 20.6.2003 in W.P.M.P.No.3442 of 2003)

.. Respondents in W.P.No.12796 of 1995

WEB COPY

1. The Deputy Divisional Manager,
Syndicate Bank, Zonal Office,
Woods Road, Madras-2.

2. The Chairman & Managing Director,
Syndicate Bank (H.O),
Manipal, P.B.No.1,
Karnataka.

https://hcservices.ecourts.gov.in/hcservices/

3. Indian Banks' Association,
rep. by its Chairman Dr.Dalbir Singh,
Head Office, Blocks II & III, Stadium House, 6th Floor,
Veer Nariman Point,
Mumbai-400 020.

(Third respondent impleaded as per order of Court
dated 20.6.2003 in W.P.M.P.No.3441 of 2003)

.. Respondents in W.P.No.12797 of 1995

Writ Petitions filed under Article 226 of the Constitution of India, praying for issuance of writs of certiorarified mandamus, as stated therein.

For petitioners in both W.Ps. : Mr.S.S.Vasudevan
For respondents in W.P.No.12796 of 1995:
Mr.Kanniah for RR-1 & 2
Mr.S.Jayaraman for R-3

For respondents in W.P.No.12797 of 1995:
Mr.John for M/s.T.S.Gopalan for R-1, R-2.
Mr.S.Jayaraman for R-3

COMMON ORDER

W.P.No.12796 of 1995 has been filed praying for issuance of a writ of certiorarified mandamus, to call for the entire records pertaining to the proceedings of the first respondent made in Ref.F.No.PAD/178/CL-Q/179, dated 6.5.1992 and PAD:178:CL-Q:8, dated 16.5.1995 and quash the aforesaid proceedings dated 6.5.1992 and 16.5.1995 and consequently direct the respondents to grant the graduation increments due to the petitioner from the date of passing the post-graduate degree course.

2. W.P.No.12797 of 1995 has been filed praying for issuance of a writ of certiorarified mandamus, to call for the entire records pertaining to the proceedings of the first respondent made in Ref.No.C.620/ZOM/PD/WS/92, dated 29.7.1992 and Ref.No.ZOM/PD/WS/IF.868/95, dated 19.4.1995 and quash the aforesaid proceedings dated 29.7.1992 and 19.4.1995 and consequently direct the respondents to grant the graduation increments due to the petitioner from the date of passing the post-graduate degree course.

3. Facts in W.P.No.12796 of 1995: Petitioner-D.Raj was appointed as Driver in the respondent-Bank on 2.5.1977 and promoted to the clerical cadre in 1981 as Shroff/Godown Keeper and had completed 18 years of service. Petitioner while joining the service in the year 1977 had acquired S.S.L.C. qualification. Subsequently, he pursued his studies through Distance Education offered by the Mysore University under the Open University System and successfully passed the post-graduate degree in M.A. (Political Science) in June 1991. Thereafter, the petitioner represented to the first respondent on 4.3.1992 that he had passed his M.A. (Political Science) from the abovesaid University and claimed graduation increment permissible under the Rules. The petitioner was however informed by the first respondent by proceedings dated 6.5.1992 that as per the Indian

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

Banks' Association guidelines, a member who is not a graduate but has acquired post-graduation of a recognised University without passing graduation, will not be eligible for graduation increment and therefore, his claim was rejected. Further representation dated 15.5.1995 was made to the first respondent. This was also rejected by the first respondent by proceedings dated 16.5.1995 reiterating the earlier rejection dated 6.5.1992. It is against these proceedings, W.P.No.12796 of 1995 has been filed.

4. Facts in W.P.No.12797 of 1995: Petitioner-C.Padmanabhan was appointed as sub-staff in the respondent-Bank on 8.5.1970 and was subsequently promoted to the clerical cadre in 1975. The petitioner while joining the service in the year 1970, had acquired SSLC qualification and subsequently, he pursued his studies through the Distance Education of Mysore University under the Open University System and successfully passed the post-graduate degree in M.A. (Political Science) in June 1991. Thereafter, he made a representation to the first respondent for graduation increments permissible under the Rules. By proceedings dated 29.7.1992, the petitioner was informed that as per the Indian Banks' Association guidelines, a member who is not a graduate but has acquired his post-graduation from a recognised University without passing graduation, will not be eligible for graduation increment and thereby, his claim was rejected. The further representation made to the first respondent was also rejected by proceedings dated 19.4.1995 reiterating the earlier stand. It is against these orders W.P.No.12797 of 1995 has been filed.

5. The case of both the petitioners is that a memorandum of settlement dated 23.2.1989 was entered into between the Managements of 54 'A' Class Banks as represented by the Indian Banks' Association and their workmen as represented by the All India Bank Employees' Association and the National Confederation of Bank Employees. Under the terms of this settlement, Clause 7 provides for Graduate Special Allowance, which reads as follows:

> "7. GRADUATE SPECIAL ALLOWANCE:
>
> On and from 1.4.1989 new graduate recruits will start at the first stage of clerical scale of pay and shall draw a fixed Graduate Special Allowance of Rs.130/- p.m. in lieu of two advance increments. The special allowance of Rs.130/- p.m. shall not rank for Dearness Allowance but shall rank for such benefits as are applicable to other special allowance payable for special allowance duties. Any employee who becomes a graduate on or after 1.4.1989 shall only draw special allowance of Rs.130/- p.m. in lieu of two advance increments. Existing graduates on reaching the maximum of the clerical pay scale shall draw the special allowance of Rs.130/- p.m."
>
> It is clarified that existing graduates on reaching the maximum of the clerical pay scale shall draw the special allowance as under:
>
> - Rs.65/- after they have completed one year after

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

reaching 20th stage of the scale.

- Rs.130/- after they have completed two years after reaching 20th stage of the scale."

Clause 23 deals with the interpretation of the provisions of the memorandum of settlement.

6. By Circular Memo No.7(f).46 of 1990-91, dated 23.7.1990, certain modifications in the terms of settlement in respect of subordinate staff were issued. Clause 4 of this Circular relates to graduation increment, which reads as follows:

"4. GRADUATION INCREMENT:

On and from 1st July, 1990 Clause 10 of the Fifth Bipartite Settlement shall stand deleted and employees who are in receipt of graduation allowance in terms of this clause shall be granted two additional increments in lieu of the allowance without affecting their future date of annual increment. Graduate employees recruited or promoted to clerical cadre or non-graduates who acquire such qualification on or after 1st July, 1990, shall also be granted two additional increments, as per the provision existing prior to the Fifth Bipartite Settlement."

7. In terms of Clause 7 of the memorandum of settlement dated 23.2.1989, the petitioners claim graduation increment. However, the respondents-Banks have rejected the same and issued the proceedings dated 6.5.1992 (in W.P.No.12796 of 1995) and 29.7.1992 (in W.P.No.12797 of 1995), which read as follows:

"6.5.1992:

With reference to member's representation dated 4.3.1992 we are pleased to note that Shri D.Raj has passed M.A.(Political Science) Degree Examination of MYSORE University. The same may be noted in his/her Service Sheet with you.

Please advise the member that as per IBA guidelines a member who is not a graduate but has acquired post graduation of a recognised University without passing graduation will not be eligible for any increments."

"29.7.1992:

In terms of existing guidelines graduation allowance/increments are not to be released to workmen who acquire postgraduate degree without first becoming a graduate of a recognised university w.e.f. 10-4-89. As such you are not eligible for payment of Education Qualification allowance also after reaching the maximum scale of pay."

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

These communications were followed by subsequent proceedings dated

16.5.1995 (in W.P.No.12796 of 1995) and 19.4.1995 (in W.P.No.12797 of 1995), whereby, the further representation of the petitioners was rejected as hereunder:

> "16.5.1995:
>
> We refer your Representation dated 15.5.95 and we regret our inability to consider his request for graduation increment as there is no change in the guidelines issued by IBA with regard to the above, even in this new settlement.
>
> As such, the member is not eligible for 2 increments as advised earlier vide our memo No.PAD/178/CL(Q)/179 dated 6.5.92."
>
> "19.04.95:
>
> We request you to kindly refer our H.O.Cir.No.292/89/BC, wherein it is clearly stated as follows in Page 2 Item 1.3.
>
> "Increments or the allowance are given for graduation. If an employee is a post-graduate but not a graduate, he shall not get the graduation increment"."

8. The contention of the petitioners that the denial of the benefit of graduation increment on the ground that the petitioners are not graduates but have acquired post-graduate degrees without passing graduation and therefore, they are not eligible for graduation increment, is based on a wrong interpretation of the term "Graduate". In any event, the respondents have wrongly interpreted that the graduation increment will be only applicable to persons who have passed the under-graduate degree and not the post-graduate degree through Open University System without passing the graduation. It is contended by the petitioners that they had undergone the course through the Open University System for two years and in support of their claim they also placed reliance on G.O.Ms.No.51, Personnel and Administrative Reforms (PER.R) Department, dated 11.2.1988, which reads as follows:

WEB COPY

> "GOVERNMENT OF TAMIL NADU
> ABSTRACT
> Qualifications – M.A. Degree awarded by Mysore University through Open University System – Recognition – Orders issued.
> ---
> PERSONNEL AND ADMINISTRATIVE REFORMS (PER.R.) DEPARTMENT
> G.O.Ms.No.51 Dated: 11.2.1988
> Read:
> From the Tamil Nadu Public Service Commission Letter No.12172/B2/87, dated 28.1.1987.
> ---
> ORDER:

https://hcservices.ecourts.gov.in/hcservices/

The Government have examined carefully in consultation with Tamil Nadu Public Service Commission the proposal whether the M.A. Degree awarded by the Mysore University through 'Open University System' can be considered as equivalent to M.A. Degree obtained through 'Regular Studies' for the purpose of employment in this State and they consider that the M.A. Degree awarded by the Mysore University through "Open University System" can be considered as equivalent to M.A. Degree obtained through regular course of studies for purpose of employment in this State.

(BY ORDER OF THE GOVERNOR)"

9. According to the petitioner, the only requirement under the settlement is that the persons claiming graduation increment should be a graduate on and after 1.4.1989. The classification sought to be made by the respondents-Banks, between the so-called graduates and post-graduates amounts to hostile discrimination, which is violative of Articles 14 and 16 of the Constitution. The University is the authority to issue the certificate on the nature of course undergone by a candidate and for conferring the degree. When once such post-graduate degree is awarded to the petitioners by a recognised University, it is not for the respondents to reject the same on the mere irrational interpretation. The petitioners have got the post-graduate degree – M.A. (Political Science), which is higher than the requirement, namely acquiring under-graduate decree and therefore, the rejection of the petitioners' claim by the respondents, would amount to invidious discrimination. It is also contended that the restriction thus made by the respondents, has no nexus to the object sought to be achieved. The graduation increment is given on acquiring such qualification and the nature of duties performed by the petitioners is not altered in any manner.

10. Learned counsel for the petitioners also relies on the 8th Bipartite settlement, dated 16.6.2005 and in particular, he referred to Clause 6 issued for the sake of smooth implementation of the settlement and Clause 34 of the Settlement relating to Graduation Pay, which read as follows:

"For the sake of smooth implementation of the settlement, the following clarifications are given.

6. A provision for release of increment for graduation or graduation pay to non-subordinate employees who acquire graduation/post-graduation qualifications from Universities/Open Universities has been incorporated in Clause 34 of the Settlement. Although this provision takes effect from the date of settlement, it has been agreed that cases of all non-subordinate employees who have acquired graduation / post-graduation qualification from Universities / Open Universities recognised by the University Grants Commission prior to the date of settlement may also be considered for release of increment for graduation or

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

graduation pay, subject to the conditions as at (i) and (ii) of Clause 34 of the Bipartite Settlement."

"34. Graduation Pay:

Non-subordinate employee who acquire graduation/post-graduation qualification from Universities/Open Universities which are recognised by the University Grants Commission will be considered as having acquired graduate qualification and would be eligible for being granted the two additional increments for graduation or graduation pay, as the case may be, as provided hereinabove subject however to the following conditions:

(i) Employees who registered under the Graduation/Post-Graduation courses of Open University have either passed the foundation course or attended the Bachelor's Preparatory Programme; and

(ii) They pursue the same course and take the same examination as the formal stream students.

This provision shall take effect from the date of the Settlement."

11. It is contended by learned counsel for the petitioners that the said 8th Bipartite Settlement is more of a Clarification. Clause 6 of the 8th Bipartite Settlement provides for payment of graduation increment in respect of persons who have acquired post-graduate qualification from Open Universities recognised by the University Grants Commission prior to the date of settlement, subject to the conditions as at sub-clauses (i) and (ii) of Clause 34 of the Bipartite Settlement. This position only clarifies that the term "Graduate" would include post "Postgraduate" also.

12. Learned counsel for the petitioners also relied on the decision of a Division Bench of the Bombay High Court reported in 1999 (2) All India Services Law Journal, page 148 (Mr.Menino Furtado vs. State Bank of India by its Chairman and others). In that case, the Division Bench of the Bombay High Court considered the question of graduation increment claimed by post-graduate employee on the basis of Bipartite Settlement. In that case also, the employee of the Bank obtained M.A. degree through Mysore Open University without undergoing the under-graduate degree course and thereafter, he claimed graduation increment in terms of the Bipartite Settlement. The claim of such employee was rejected by the Bank authority in the same manner as in the present case. However, the Division Bench of the Bombay High Court came to hold that such discrimination with regard to the post-graduate degree-holders was not valid and granted the benefit to the employee as provided under the Bipartite Settlement.

13. In the case reported in 2003 (Vol.III) LLJ 1137 (Krishnappa.M. vs. S.B.I), the Karnataka High Court had an occasion to deal with similar claim of the Bank employee who had obtained post-graduate degree from Mysore Open University and claimed graduation increment in terms of the Bipartite Settlement. Interpreting the very same Settlement, the Karnataka

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

High Court came to the conclusion that the denial of graduation increment to the employee who had acquired post-graduate degree through Open University, was bad. Following the view taken by the Bombay High Court referred to above, the Karnataka High Court also granted the relief to the employee directing the Bank in that case to grant graduation increment.

14. Per contra, learned counsel appearing for the respondents-Bank would submit that the Bipartite Settlement has been entered into under Section 18(1) of the Industrial Disputes Act, along with the respective Unions, and therefore, the interpretation given by the Indian Banks' Association or the All India Bank Employees' Association that only graduates are eligible for graduation increment, will be binding on parties. In any event, Clause 7 of the Bipartite Settlement speaks only about the graduate allowance and does not include the post-graduate degree. Learned counsel would also submit that the claim is in the nature of industrial dispute which cannot be agitated under Article 226 of the Constitution of India. In this regard, he would rely upon the decision of a Division Bench of this Court reported in 2005 (1) C.T.C. 1 (Indian Additives Ltd. vs. Indian Additives Employees' Union) and would contend that any issue touching upon the service condition can be agitated only before the forum as provided under the Industrial Disputes Act. Learned counsel would also rely upon the decision of the Supreme Court reported in 2005 (8) S.C.C. 264 (U.P. State Spinning Co. Ltd. vs. R.S.Pandey) as to the scope of Article 226 of the Constitution of India and would strenuously contend that in the present case, the writ petitions should be dismissed on the ground that there is an effective alternative remedy under the provisions of the Industrial Disputes Act for redressal of the grievance of the petitioners. Paragraphs 20 and 21 of the said decision of the Supreme Court reported in 2005 (8) S.C.C. 264 read as follows:

> "20. In a catena of decisions it has been held that writ petition under Article 226 of the Constitution should not be entertained when the statutory remedy is available under the Act, unless exceptional circumstances are made out.
>
> 21. In U.P. State Bridge Corpn. Ltd. v. U.P. Rajya Setu Nigam S.Karamchari Sangh (2004 (4) SCC 268 : 2004 SCC (L & S) 637) it was held that when the dispute relates to enforcement of a right or obligation under the statute and specific remedy is, therefore, provided under the statute, the High Court should not deviate from the general view and interfere under Article 226 except when a very strong case is made out for making a departure. The person who insists upon such remedy can avail of the process as provided under the statute. To same effect are the decisions in Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke (1976 (1) SCC 496 : 1976 SCC (L & S) 70), Rajasthan SRTC v. Krishna Kant (1995 (5) SCC 75 : 1995 SCC (L & S) 1207 : (1995) 31 ATC 110 : AIR 1995 SC 1715), Chandrakant Tukaram Nikam v. Municipal Corpn. of Ahmedabad (2002 (2) SCC 542 : 2002 SCC (L & S) 317) and in Scooters India v. Vijai E.V.Eldred (1998 (6) SCC 549 : 1998 SCC (L & S) 1611)."

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

15. However, learned counsel for the petitioners would rely on paragraph 12 of the decision of the Supreme Court reported in AIR 1971 SC 33 (Hirday Narain vs. I-T Officer, Bareilly) which reads as follows:

> "12. An order under Section 35 of the Income-tax Act is not appealable. It is true that a petition to revise the order could be moved before the Commissioner of Income-tax. But Hirday Narain moved a petition in the High Court of Allahabad and the High Court entertained that petition. If the High Court had not entertained his petition, Hirday Narain could have moved the Commissioner in revision, because at the date on which the petition was moved the period prescribed by Section 33-A of the Act had not expired. We are unable to hold that because a revision application could have been moved for an order correcting the order of the Income-tax Officer under Section 35, but was not moved, the High Court would be justified in dismissing as not maintainable the petition, which was entertained and was heard on the merits."

Learned counsel for the petitioners would submit that since the writ petitions were admitted and pending for a long period of time and having heard the case on merits, and also on the ground that the earlier decision of the Court has interpreted such Settlement in favour of the employee, the stand taken by the Banks that the writ petitions will not lie, in such circumstances, should be rejected.

16. Learned counsel appearing for the respondents-Banks would submit that grant of graduation increment is a policy decision and therefore, it cannot be challenged under Article 226 of the Constitution. Learned counsel would further state that remedy is available under Section 2(k) of the Industrial Disputes Act and the petitioners' claim for graduation increment touches upon the terms of employment and therefore, under the provisions of the Industrial Disputes Act, the petitioners can make their claim. Learned counsel would also submit that Clause 7 of the Bipartite Settlement which is originally claimed by the petitioners only speaks about the graduation allowance and it is only in the 8th Bipartite Settlement for the first time that the issue is clarified that the Open University post-graduate degree will also be considered. He would also contend that the Circular of the Indian Banks' Association has not been challenged and only the communications of the respondents-Bank have been challenged and therefore, the writ petitions have to be dismissed. He would also rely upon the judgment of a Division Bench of this Court in W.P.Nos.1256 and 5657 of 1999, dated 25.4.2002, to contend that the petitioners post graduates under the open university cannot claim the benefits as a right. Learned counsel draws the attention of this Court to the following portion of the decision of this Court:-

> "9. Petitioners before the Tribunal are Secondary Grade Primary School Headmasters who have acquired M.A. Degree under the Open University System. They do

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

not come under the three categories of teachers eligible to be promoted, but only under the category of secondary grade teachers who are directed to be appointed. If no qualified teacher in the above three categories of teachers is available in the unit, the senior most among the persons working as secondary grade teacher, but qualified in B.Ed./Tamil Pandit is to be considered for promotion to the post of Middle School Headmaster. We are not here concerned with the other aspect of eligibility for promotion etc., since there were a number of litigations between the Secondary Grade Teachers B.Ed. Grade, Tamil Pandits and Middle School Headmasters, etc. The scope of controversy is limited to the consideration whether the open university degree is equivalent to the prescribed degree or a degree equivalent standard of B.A. or B.Ed. degree. The Government, in the impugned order, G.O.Ms.No.476 dated 19.11.1997, have considered this question, conscious of the other Government Orders in G.O.Ms.No.216 dated 26.8.1997, wherein the M.A. Degree obtained from open university was considered equivalent to a degree for appointment in public service. However, insofar as the posts created under the Special Rules for Tamil Nadu Elementary Education Service is concerned, they have considered the issue and decided that the teachers who obtained degree with the basic study and qualification only can teach the children effectively and in such a way to make the students understand the subject and persons who obtained M.A. Degree in open university without a basic degree cannot be appointed.

10. The applicants before the Tribunal are teachers who acquired direct M.A. Degree qualification without having a Bachelor's Degree, which is the requisite qualification prescribed under the rules. Rule 13 of the General Rules did not specify M.A. Degree from open university as equivalent to B.A. or B.Sc. Degree. The Open University Scheme has come into operation long after the framing of the Special Rules in the year 1981 and the Scheme is of a recent origin. As per this Scheme, which is stated to be a distant education programme and from the Prospectus of the Annamalai University under the Open University System, the eligibility for this course is that a candidate should have completed 25 years of age and that no formal educational qualification is insisted upon, which means that technically, a person who does not even know to read or write can be admitted to the course, provided he has completed 25 years of age and the person who undergoes this course has to take eight papers of the relevant subjects like History, Sociology, Economics, Public Administration and English. They offer courses both in English medium as

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

well as in Tamil medium. The students need not undergo a course in languages."

"14. The M.A. Degree holders from open university acquire knowledge only in the relevant subjects in which the candidate appears for the graduate course and the course may be either through Tamil or English mediums. But, however, they do not have proficiency of English as a language in the degree level. The M.A. Degree holders from open university who do not study English as a language in degree level cannot have the ability in that language and they could not even have studied the language to the high school level. Since no formal education is required and that these candidates write the concerned subjects directly, they do not have any level of language study and therefore, they cannot be compared with the B.T. Assistants or Tamil Pandits or B.Ed. Degree holders. Therefore, they cannot be treated as having qualification to teach Standards VI, VII and VIII."

"21. It is argued that many of the contesting respondents have already studied upto high school level and therefore, technically, they would have gone through the system of formal education. While considering the scope of the equivalence of a M.A. Degree, theoretically it is not possible to contend that a person who has not even gone into the shades of a school even during rain or sunshine would be able to become a headmaster of a middle school in case of direct recruitment. Such a contingency would cause great havoc to the system of education. Therefore, whatever may be the purpose for which the open university provides for M.A. Degree, insofar as the appointment of teachers is concerned, we are of the considered view that such degrees cannot be equated with a degree, which is the minimum qualification required for the post. In our view, the Government Order is reasonable and has been exercised appropriately as a supplement to the service rules. The Tribunal, in our view, had erred in interfering with the Government Order." (emphasis supplied)

17. Before we proceed any further it will be necessary to refer to the judgment of the Division Bench of the Bombay High Court in the decision reported in 1999 (2) All India Services Law Journal, page 148 (cited supra), which held that the post-graduate degree in M.A. is also a graduate. It will be useful to refer to the observations of the Division Bench of the Bombay High Court, which read as follows:

"7. On a careful consideration of the contentions raised in the affidavit of Shri Pain, we are not inclined to accept the same. In the first instance it would not be proper and correct to say that the

https://hcservices.ecourts.gov.in/hcservices/

petitioner who is M.A. is not a graduate. As per the Concise Oxford Dictionary the meaning of the word "graduate" is a person who has been awarded an under graduate or first academic degree, a person who has completed a course of study. In Black's Law Dictionary the word "graduate" is interpreted as one who has received a degree, or other evidence of completion from a graded School, High School, Trade or Vocational School, College, University graduate or Professional Schools or the like. The words "Post Graduate" is interpreted in the Concise Oxford Dictionary as a course of study carried on after taking first degree. These definitions are based on the traditional educational curricular which permit acquiring of Master's Degree only after attaining the Bachelor's Degree. In order to be a 'Master' one has first to be a 'Bachelor'. But where a University like one of Mysore permits acquiring of a Master's Degree directly without first taking a Bachelor's degree, then the meaning of 'graduate' in the context cannot be stretched to such an extent as to deny the benefit of advanced increment to a post graduate. It is true that in the instant case the petitioner does not hold any Bachelor's degree, but holds a Master's Degree. He is not a double graduate since he has not obtained B.A. degree. According to Shri Pain the post graduation degree issued by Mysore University which is a recognized University, is accepted for various purposes. Master's degree at any rate is higher than graduation. In such eventuality, when a person holding lower degree namely graduation is entitled to advance increment then obviously a person holding post graduate degree would also be eligible for the same.

8. In our opinion, one of the objects in introducing the said scheme appears to be based on the concept that better the educational qualifications, more efficient the service. The interpretation sought to be placed on the term "graduate" is too technical. It lays more emphasis on the letter than the spirit. The benefit cannot be availed of by a person who is under graduate, but there should not be any difficulty in extending the said benefit to a person holding a post-graduate degree. The higher qualification implies acquiring of lower qualification. A person with higher qualification must be deemed to have more proficiency than a person with lower qualification. The emphasis on the conditions of eligibility for the grant of graduation increment/allowance is of minimum requirement of holding a Bachelor's degree. Therefore, if an employee is over qualified, he does not become ineligible for claiming the said benefit. Take an instance, where the minimum qualification required for a typist is speed of 40 w.p.m. A person having a speed

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

> of 30 w.p.m. may not qualify for the said post, but a person having a speed of say 60 w.p.m. cannot be regarded as unqualified or ineligible for the post of typist. The general rule that "larger includes smaller" fittingly applies to the present case. We, therefore, find that there is absolutely no sound justification or reason for treating an employee with post-graduate degree as being not eligible for the benefit of graduate increment/allowance. The interpretation adopted by the respondents is, in our opinion, arbitrary and it discriminates the petitioner without any reason against employees who holding Bachelor's degree and reap the advantage of the beneficial scheme."

As regards the plea of alternative remedy, the Division Bench of the Bombay High Court in the said decision, observed as follows in paragraph 9:

> "9. As regards the contention about the maintainability of the petition on the ground that alternate and efficacious remedy is available to the petitioner and even assuming that the petitioner could be treated as "Workman" under the Industrial Disputes Act, 1947, it would not be just and proper in the peculiar circumstances of the case to reject this petition solely on the ground after a period of five years. We are therefore not inclined to uphold the objections raised in this behalf."

The Division Bench of the Bombay High Court in the said decision, set aside the Circular dated 8.7.1989 and the letter dated 12.11.1990 issued by the respondents therein denying the benefit of graduation increment to the employee in that case.

18. It is apparent that on going through the various Bipartite Settlements, in particular, the 8th Bipartite Settlement, the benefit of graduation increment was more in the nature of incentive to the employees to encourage them to undergo higher education. In the 5th, 6th and 7th Bipartite Settlements, a reference was made to graduate increment as applicable only to graduates. But the 8th Bipartite Settlement clearly clarifies that it applies to graduates and post-graduates from Open Universities recognised by the University Grants Commission. Clarification 6 of the 8th Bipartite Settlement also speaks about the grant of graduation increment to graduates and post-graduates who have obtained such degrees prior to the date of that Settlement.

19. It is not disputed that even prior to the date of the 8th Bipartite Settlement, the petitioners have acquired such a post-graduate degree from Open University. In other words, the 8th Bipartite Settlement is more in the nature of a clarification of the earlier Bipartite Settlements.

https://hcservices.ecourts.gov.in/hcservices/

20. The interpretation of the word "graduate" was successfully challenged by several employees who had acquired post-graduate degree

through Open University System, as is apparent from the judgment of the Division Bench of the Bombay High Court (1999 (2) All India Services Law Journal, page 148, cited supra) and the decision of the Karnataka High Court (2003 (Vol.III) L.L.J. 1137, cited supra).

21. Simply because an employee has acquired post-graduate degree through Open University System, it cannot be said that he is not a graduate. The only question that has to be considered is, the purpose and intent behind the graduation increment. The employees in the present case are not required to perform any duty different from what they have been doing earlier. All that the Bipartite Settlement speaks about is the grant of graduation increment to those who have acquired the graduate degrees. The petitioners/employees are not required to do any specialised function based on such higher degree or qualification.

22. The Division Bench decision of this Court in W.P.Nos.1256 and 5657 of 1999, dated 25.4.2002 (cited supra), relied on by learned counsel for the respondents-Banks, is a case where certain persons were claiming the benefit of being appointed as Middle School Headmasters having obtained post-graduate degree from Open University. In this context, it would be relevant to quote the portion of the said Division Bench judgment of this Court dated 25.4.2002, which deals with the issue:

> "9. .... However, insofar as the posts created under the Special Rules for Tamil Nadu Elementary Education Service is concerned, they have considered the issue and decided that the teachers who obtained degree with the basic study and qualification only can teach the children effectively and in such a way to make the students understand the subject and persons who obtained M.A. Degree in open university without a basic degree cannot be appointed."

It is therefore clear that the post which was under issue before the Division Bench of this Court, was created by a Special Rules for Tamil Nadu Elementary Education Service and therefore, the Court came to the conclusion that while discharging their duties as Teachers, the persons having post-graduate degree from the Open University System cannot satisfy the requirement. Further, the Division Bench of this Court also discussed the capacity of the post-graduate degree-holders with that of the B.T. Assistants or Tamil Pandits or B.Ed. Degree-holders in relation to their capacity to teach the students of Standards VI, VII and VIII. It will be pertinent to point out that the issue in that case was the challenge to G.O.Ms.No.476, dated 19.11.1997, whereunder the Government held that the M.A. Degree obtained under the Open University System directly cannot be treated as equivalent to a degree for consideration as qualification for promotion to the category of Headmasters. As regards the employment, other than teachers, the other Government Orders which were in force accepted the degree obtained from the Open University System. Therefore, the judgment of the Division Bench of this Court, dated 25.4.2002, relied on by the respondents-Banks, is clearly distinguishable on facts.

https://hcservices.ecourts.gov.in/hcservices/

23. There is no dispute that the graduates are entitled to the benefit of graduation increment. It is only the interpretation of the word

"graduate" that has come up for consideration before this Court. To say that with emphasis, it is not the first time that such issue has been brought before this Court. As I have already pointed out, the Bombay High Court and the Karnataka High Court, had occasions to deal with the very same issue and they have interpreted the word "graduate" to include the post-graduate under the Open University System. In the earlier cases also, the Bipartite Settlement provided for graduation increment.

24. The challenge before this Court is not with regard to the conditions or terms of the employment or the conditions of service. Section 2(k) of the Industrial Disputes Act reads as follows:

> "2(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"

The present case does not fall under the said definition of "industrial dispute" and none of the conditions specified thereunder are attracted to the facts of the case and therefore, the question of relegating the petitioners to seek the alternative remedy, does not arise.

25. Further, it is the contention of the respondents-Banks that the interpretation clause provided under the Bipartite Settlement provides for clarifications of any issue which is under dispute and the Indian Banks' Association clarifications will be binding.

26. In this case, there is no dispute or difference between employer and employer or the workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person. Here is a case where the petitioners are denied the benefit of graduation increment only on the ground that the word "graduate" will not include a post-graduate under the Open University System. The interpretation given by the Indian Banks' Association or any other body, can only be with regard to the terms of employment, but not with regard to the interpretation of the word "graduate", which can only be clarified by the statutory authorities like the University Grants Commission or the Universities themselves. In this case, the so-called Circular(s) seek(s) to encroach upon the functions of the University and the University Grants Commission while interpreting the word "graduate". The respondents or the Bank does not have such a power. When once they accept that the graduation increment is available to graduates, the benefits will flow automatically to all graduates including the post-graduates under the Open University System.

27. In the present case, learned counsel for the respondents would submit that it is a case of an industrial dispute touching upon the service conditions of the petitioners and therefore, they should be directed to approach by way of alternative remedy. I am afraid that such a view can be countenanced. In the very same decision in (2005)8 Supreme Court Cases 264 (U.P. State Spinning Co. Ltd. - v. - R.S. Pandey) relied on by the learned counsel for the respondents to state that the writ

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/

petition should be dismissed on the ground of alternative remedy, the apex Court also held as follows:-

> "When the High Court had entertained a writ petition notwithstanding existence of an alternative remedy this Court while dealing with the matter in an appeal should not permit the question to be raised unless the High Court's reasoning for entertaining the writ petition is found to be palpably unsound and irrational. Similar view was expressed by this Court in First ITO v. Short Bros. (P) Ltd., (1996)3 SCR 84 : AIR 1967 SC 81 and State of U.P. v. Indian Hume Pipe Co. Ltd. (1977)2 SCC 724 : 1977 SCC (Tax) 335). That being the position, we do not consider the High Court's judgment to be vulnerable on the ground that alternative remedy was not availed."

In the other decision relied on by the learned counsel for the respondents in 2005(1) CTC 1 (Indian Additives Ltd. v. Indian Additives Employees' Union), the First Bench of this Court, while considering the issue of alternative remedy, observed as follows:-

> "No doubt, it is well-settled that alternative remedy is not an absolute bar a writ petition but it is equally well-settled that ordinarily if there is an alternative remedy, the discretion under Article 226 should not be exercised and the party should be relegated to avail the alternative remedy."

The decision before the First Bench of this Court was a case of breach of the provisions of Section 9A of the Industrial Disputes Act and therefore, the Court held that the remedy that was available to the Union was to raise an Industrial Dispute and seek adjudication of the same before the appropriate forum. In the present case, the issue cannot be termed as Industrial Dispute for the reasons set out above. Therefore, alternative remedy is not a bar for seeking remedy under Article 226 of Constitution of India in a given case. The decision of the Apex Court in A.I.R. 1971 Supreme Court 33 referred to above will be more appropriate to the facts of the present case. Further, in view of the interpretations given by the Division Bench of the Bombay High Court and the decisions of the High Courts referred to above clearly fortifies the interpretation without any doubt. The interpretation as has been made by the learned counsel for the respondents is erroneous and contrary to the judgments cited above. Therefore, no useful purpose will be served by relegating the objections to the so-called alternative remedy. Under the provisions of the Industrial Disputes Act, an interpretation of this nature cannot be made. In any event the decision of the Court will be binding on such authority. Therefore, the petitioners have rightly approached this Court for the relief and they are entitled to the same.

28. In such view of the matter, the impugned orders of the respondents-Banks rejecting the claim for graduation increment to the petitioners, are set aside. The petitioners will be entitled to graduation

https://hcservices.ecourts.gov.in/hcservices/

increment as applicable from time to time in terms of the various Bipartite Settlements. The amounts shall be calculated and paid to the petitioners within a period of six weeks from the date of communication of this order. The writ petitions are ordered in the above terms. No costs. W.M.Ps. are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

cs/ts

To
1. The Chief Officer, Personnel and Administration Department,
Indian Overseas Bank, Central Office, Madras 2.

2. The Chairman & Managing Director,
Indian Overseas Bank,
Anna Salai,
Madras-2.

3. The Deputy Divsional Manager,
Syndicate Bank,
Zonal Office, Woods Road,
Madras 2.

4. The Chairman and Managing Director,
Syndicate Bank [HO],
Manipal, P.B.No.1, Karnataka.

+ 1 CC To M/s.T.S.Gopalan & Co. Advocate SR NO.48269

+ 2 CCs to Mr.S.S.Vasudevan, Advocate SR NO 48783 & 48782

WEB COPY

W.P.Nos.12796 and 12797 of 1995
16-10-2006

ng(co)
gp/30.10.

https://hcservices.ecourts.gov.in/hcservices/